



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT

ISSUED TO BASF CORPORATION

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and BASF Corporation, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “BASF” means BASF Corporation, certified to do business in Virginia and its successors and assigns.
7. “HRSD” means the Hampton Roads Sanitation District, a political subdivision of the Commonwealth of Virginia.

8. “VPDES” means the Virginia Pollutant Discharge Elimination System as described in Virginia Regulations 9 VAC 25-31-10 *et seq.*
9. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. BASF owns the site of a former acrylic fibers manufacturing complex located at 8961 Pocahontas Trail, in Williamsburg, VA (hereinafter referred to as the “facility”). The facility, which dates from the 1950’s, utilized zinc chloride in manufacturing activities. Manufacturing at the facility ceased in approximately 1994.
2. On July 8, 1998, the Board entered into a Consent Special Order with BASF Corporation regarding the facility. The 1998 Order addressed exceedances of effluent zinc limits, closure of surface impoundments and sludge lagoons, operation of treatment facilities for zinc contaminated water from the site, submission of annual reports of treated water information, and development of a water quality monitoring plan for the affected State waters (an unnamed tributary to Wood Creek, Wood Creek itself, and Skiffes Creek). BASF is in compliance with the 1998 Order.
3. Facility stormwater flows from the contaminated dredge spoils area, the closed wastewater sludge lagoons, and the closed onsite landfill, contain zinc from historical manufacturing operations.
4. The zinc contaminated stormwater flows at the facility are currently treated by a passive constructed wetlands system (CWS). The resultant CWS treated water is used to spray irrigate facility grasses, with runoff flow back to the CWS, or is pumped by permit to HRSD. BASF does not currently hold a VPDES permit for discharges from the facility into State waters.
5. BASF holds a HRSD discharge permit for the facility allowing up to 200,000 gallons per day at 2 mg/l zinc or up to 350,000 gallons per day at 1 mg/l zinc, as an option for discharging the CWS treated water.
6. In April 2004 BASF reported the below unpermitted discharges from the facility due to overflows of CWS treated water to an unnamed tributary leading to Wood Creek and Skiffes Creek:

Date	Estimated discharge, gallons	Zinc level, mg/l	Estimated lbs zinc
April 11 - 19	1,000,000	11.3	100
April 27 - 30	337,000	12.3	35

7. According to BASF facility records, the storm surge from hurricane Isabel backed up the creek into the CWS and levels from the creek topped the dike. Consequently, after the hurricane in September 2003, CWS levels at the facility

were above normal pool levels, zinc levels were increasing due to hurricane induced high water levels and pumping to HRSD was reduced due to fouling from the hurricane storm surge. In June 2004 BASF activated a temporary treatment system to reduce the CWS zinc levels to HRSD permit limits thereby allowing BASF to divert flows to HRSD at the maximum 200,000 gallons per day rate (2mg/l zinc).

8. BASF has reportedly instituted corrective actions at the facility for increased performance of the CWS system to reduce the potential for unpermitted discharges. The corrective actions include increased pumping capacity to HRSD from 200,000 gpd to approximately 350,000 gpd, installation of parallel collection lines to improve flow and capacity in the CWS, and arranging for temporary treatment systems as needed to meet HRSD pre-treatment limitations.
9. Virginia Code § 62.1-44.5 and 9 VAC 25-31-50 of the Regulations prohibit waste discharges or other alterations of State waters except as authorized by permit. BASF did not have a permit for the discharges to State waters that occurred in April 2004. BASF violated the Virginia Code and the Regulations by discharging pollutants to State waters from the BASF facility in April, 2004.
10. BASF was issued Notice of Violation #04-05-TRO-001 on May 11, 2004 for the unpermitted discharges that occurred during April 2004. This Notice of Violation advised BASF of the unpermitted discharges and applicable regulatory citations.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders BASF, and BASF agrees, to pay a civil charge of \$45,500 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include BASF's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. This Order shall supersede and cancel the Consent Special Order that became effective July 8, 1998.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of BASF, for good cause shown by BASF, or on its own motion after notice and opportunity to be heard.

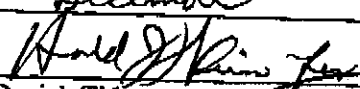
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, BASF admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BASF consents to the venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BASF declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by BASF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BASF shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. BASF shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BASF shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which BASF intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BASF. Notwithstanding the foregoing, BASF agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BASF. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BASF from its obligation to comply with any statute, regulation, permit condition, other order in effect, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, BASF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of December, 2005.


Francis L. Daniel, Tidewater Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

BASF Corporation voluntarily agrees to the issuance of this Order.

By: 

Date: 9/21/05

~~State of New Jersey~~
~~Commonwealth of Virginia~~
City/County of Morris

The foregoing document was signed and acknowledged before me this 21ST day of

September, 2005, by William E. Pearson, who is

Director, Real Estate
(title) of BASF Corporation, on behalf of BASF.


Notary Public

My commission expires: JEANNE MARIE HAHN
A Notary Public of New Jersey
My Commission Expires October 24, 2007